IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

TRC.No. 525 of 2001

(AITA.82/1996 of AGRL. INCOME TAX APPELLATE TRIBUNAL, . ADDL.BENCH,KOZHIKODE)

PETITIONER/RESPONDENT:

THE RELIGIOUS EDUCATION TRUST,
KUTTIYADI.

BY ADV. SRI.GOVIND K.BHARATHAN
ADV. SRI.PRAVEEN. V
ADV. SMT.DIVYA. P.A.

RESPONDENT/APPELLANT:

STATE OF KERALA.

BY SR. GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 25/07/2007 , ALONG WITH TRC.NO. 526 OF 2001 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T. SANKARAN, J.

T.R.C. Nos.525, 526, 527, 528 of 2001,
141, 145, 146, 147 & 148 OF 2003

Dated this the 25th July, 2007

O R D E R

H.L.DATTU, C.J.

These Tax Revision Cases arise out of the orders passed by the Agricultural Income Tax Appellate Tribunal, Additional Bench, Kozhikode.

2. T.R.C.Nos.525 of 2001, 526 of 2001, 527 of 2001 and 528 of 2001 pertains to the assessment years 1987-88, 1988-89, 1989-90 and 1990-91 respectively.

3. T.R.C.Nos.141 of 2003, 145 of 2003, 146 of 2003, 147 of 2003 and 148 of 2003 pertains to assessment years 1982-83, 1984-85, 1985-86, 1983-84 and 1986-87 respectively.

4. Since the issues involved in all these revision cases are identical, these Tax Revision Cases are clubbed together, heard and disposed of by this common order.

5. Petitioner is an assessee under the provisions of the Agricultural Income Tax Act, 1950. It is borne on the files of Agricultural Income Tax Officer, Perambra. The petitioner, Religious Educational Trust Kuttiyadi, was created by a Trust Deed executed on 31.12.1976 and registered in No.16/77. As per the terms of the Trust Deed, the Managing Committee of the Kuttiyadi Islamic College which was founded in the year 1956 was dissolved and the institution was transferred to the newly created trust on 31.12.1976. The college committee also resolved by passing a resolution

dated 10.11.1976 that the movables and immovable properties belonging to the college should be transferred to the Trust to be formed and constituted for the proper conduct of the College, Orphanages, etc..

6. The Trust had filed its return of income before the Agricultural Income Tax Officer and claimed exemption from levy of agricultural income derived from the property held by the Trust on the sole ground, that the Trust is established for charitable and religious purposes and income derived from the agricultural land held by the Trust is wholly expended for charitable and religious purposes.

7. Before the assessing authority, the assessee had produced copy of the Trust Deed and the entire books of accounts maintained by the Trust.

8. The Agricultural Income Tax Officer, after carefully considering the object of the Trust and looking into the income derived from the agricultural operations and the expenditure incurred out of the agricultural income derived, has come to the conclusion that the petitioner is not entitled to the benefit of exemption from payment of agricultural income tax.

9. The assessee, being aggrieved by the orders passed by the Agricultural Income Tax Officer, had carried the matter by way of first appeals before the Appellate Authority. The Appellate Authority has granted the benefit of exemption to the assessee. The State being aggrieved by the orders passed by the First Appellate Authority, had

carried the matter by way of second appeals before the Income Tax Appellate Tribunal. The Tribunal has allowed the appeals filed by the Revenue and while doing so, has placed reliance on certain observations made by the Apex Court. The conclusions reached by the Tribunal is that, the object of the Trust is to propagate and to promote a particular religion and render service to the followers of that religion and therefore, the Trust was not entitled to the exemption under Section 4(1)(b) and (c) of Agricultural Income Tax Act, 1950.

10. It is the correctness or otherwise of the orders passed by the Tribunal for several assessment years is the subject matter of these Tax Revision Cases.

11. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "i) Whether on the facts and circumstances of the case in the light of the clear and unequivocal terms of Annexure-A Trust that the conduct of the school etc. was to be in the service of the people in general and the Muslim Community in particular, and clause-3(b) of the Trust which lays down that the Trust is intended to protect and to help the people in general and Muslims in particular and clause-C which lays down that the Trust shall promote educational institutions among students in general and Muslim students in particular, thus envisaging its purpose to promote advancement of benefits to the public, and the fact that the Islamic College imparts school level general education to the public on the basis of the State Government syllabus, the Agricultural Income Tax Appellate Tribunal was justified in holding that the dominant purpose of the Trust is to propagate a particular religion and to render service to the followers in that religion.

ii) Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal's reliance on State of Kerala Vs. M.P.Shanti Varma Jain (1998) 6 KTR 461 (SC) is correct and sustainable especially in view of the fact that the facts of Shanti Jain's case are totally different from the facts and circumstances of the petitioner's case.

iii) Whether on the facts and circumstances of the case the Agricultural Income Tax Tribunal was justified in entering into a finding that the object of the Trust was only to spend money for the propagation of a particular type of religion and for the services of its followers thereby making it ineligible for the exemption under Section 4(3) of the Act."

12. Sri.Govindh K. Bharathan, learned Senior Counsel appearing for the assessee would strenuously contend before us that the assessing authority as well as the Tribunal has committed an error in coming to the conclusion that the assessee is not entitled to the exemption provided under the Act. In aid of this submission, the learned counsel would submit that the Trust formed is mainly for the general public purpose and the income derived from the agricultural land held by the Trust is spent mainly for the general public and, therefore, the assessing authority as well as the Tribunal could not have come to the conclusion that the income derived by the Trust from its agricultural land is spent exclusively for a particular religion. The learned Senior Counsel also takes us through the objects of the Trust Deed and also the orders passed by the assessing authority and the Tribunal.

13. In order to answer the issues raised by the learned counsel

appearing for the assessee, the objects of the Trust require to be noticed. Under clause 3 of the trust deed, the Aims and Objectives of the Trust is set out in detail. It is as under:-

> "The aims and objectives of the trust:- The income from the trust shall be used and utilised for the following purposes:- namely (a) To run the Kuttiadi Islamia College in a High standard and to promote and establish other ancillary establishments etc. To assist and promote Islamic Institutions imparting Islamic religious teachings and to promote and facilitate running of other Islamic Institutions. To aid and help financially the madrassas, Othupura, Dhars, Reading rooms, Educational and research centres, speeches, seminars, Publications etc. To establish, promote and run institutions intended to publish and print books and periodicals relating to Islamic religion and study and to establish, promote and run poor homes, Nursery Schools etc. and to help and assist such institutions.
>
> (b) To protect and assist institutions like Mosques, Burial ground, poor homes, Musafirkhana, Rehabilitation centres, Health centres, Relief centres etc. intended to help the people in general and Muslims in particular and to give salary, allowance and donations to employees of such institutions.
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> (c) To promote educational institutions and to award scholarships, prizes, fees and stipends etc. to promote religious work and religious institutions among students in general and Muslim students in particular.
>
> (d) To assist to arrange for marriage of poor girls in the community.
>
> (e) To so such other or further acts and deeds deemed fit and proper by the Trustee in the name of almighty Allah.
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> The trustees shall attend to the aforementioned objects within the limits of financial restraints after arranging for the management of the College and for paying Government dues, taxes etc."

14. Though in too many places it is stated, that the income from theTrust shall be used and utilised for public purposes, on a close reading of the objects of the Trust Deed, there is a clear indication that the Trust is formed to promote Islamic Institutions imparting Islamic religious teachings and to promote and facilitate running of other Islamic Institutions. Further, to aid and help financially the madrassas, Othupura, Dhars, reading rooms, etc. and to establish, promote and run institutions intended to publish and print books and periodicals relating to Islamic religion and to study and establish, promote and run poor homes, nursery schools etc. Clause (b) of the Trust Deed speaks of expending the income from the Trust for the purpose of protecting and assisting institutions like mosques, burial ground, poor homes, musafirkhana, rehabilitation centres, health centres etc. intended to help the people in general and Muslims in particular and to give salary, allowance and donations to the employees of such institutions. Clause (c) of the Trust Deed provides for using the income of the Trust for the purpose of promoting educational institutions and to award scholarships, prizes, fees, stipends etc. to promote religious work and religious institutions among students in general and Muslim students in particular. Clause (d) of the trust deed provides for using the income of the trust to assist, to arrange for marriage of poor girls in the community and to do such other acts and deeds deemed fit and proper by the trustees in the name of Almighty Allah, etc..

15. Before we go further, we intend to make it clear that mere usage of the expression more often in the trust deed that 'the funds could be utilised for the general public', would not make a Trust meant for the general public. The Trust Deed requires to be read in toto and not in piecemeal. If the Trust Deed is read in that particular manner, one and the only conclusion that can be reached is that the object of the Trust is meant only for propagating a particular religion.

16. Keeping that aspect of the matter in view, let us go into the legal issues involved in these Tax Revision Cases. Section 3 of the Act is a charging provision. Section 4 of the Act is the machinery provision providing for computation of agricultural income for the purpose of Agricultural Income Tax Act.

17. Section 4 of the Act was amended by Act 9 of 1974. The amended provisions omitting what is not necessary is extracted and the same reads as under:-

> "4. Total agricultural income-- (1) Subject to the provisions of this Act, the total agricultural income of any previous year of any person comprises all agricultural income derived from land situated within the State and received by him within or without the State, but does not include --
>
> (a) any agricultural income derived from land situated without the State;
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> (b) any agricultural income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in the State;

(c) any agricultural income derived from property held under trust in part only for such purposes, to the extent to which such income is applied to such purposes in the State.

... .

(3) Nothing contained in clause (b) or clause (c) of sub-section (1) shall operate so as to exclude from the total agricultural income of the previous year of the person in receipt thereof--

(a) any part of the agricultural income from the property held under trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution, any agricultural income thereof, if the trust or institution is created or established for the benefit of any particular religious community or caste;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any agricultural income thereof --

(i) if under the terms of the trust or the rules governing the institution any part of such income enures; or

(ii) if any part of such income or any property of the trust or institution is, during the previous year, used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (5)."

18. Under Section 4 of the Act, the total agricultural income of any previousyear of any person comprises all agricultural income derived from the lands situated within the State and received by him within or outside the State, but would not include an income derived from a land situated

outside the State;agricultural income derived from the property held under a Trust wholly for charitable or religious purpose to the extent to which such income is applied to such purposes in the State and thirdly, an agricultural income derived from the property held under a Trust in part only for such purposes to the extent to which such income is applied to such purposes in the State. The exclusion of Agricultural income from tax to the agricultural income available under Section 4 of the Act is confined to agricultural income derived from the property held under a trust wholly for charitable or religious purpose to the extent to which such income is applied to such charitable or religious purposes in the State.

19. Sub-section (3) of Section 4 of the Act envisages that nothing contained in clause (b) or (c) of Sub-section (1) of Section 4 shall operate so as to exclude the total agricultural income of the previous year of the person in respect of any part of the agricultural income from the property held under Trust for private religious purposes which does not enure for the benefit of the public. That only means if there is a private religious trust and the income derived from the private religious trust is not meant for general public, then the benefit of Section 4(1)(b) of the Act cannot be granted. Similarly, in the case of a Trust meant for charitable purposes, the income derived from such a Trust, if it is created or established for the benefit of any particular religious community or caste, then again the Agricultural income derived from such a trust cannot apply for the benefit of Section 4(1)(b) of the Act.

20. Keeping in view the possible construction that could be placed on Section 4(1)(b) and (c) read with Section 4(3)(a) and (b) of the Act, let us once again get back to the factual situation.

21. The assessee is a Trust. It owns agricultural lands. It has an agricultural income. It is created or established under a Trust Deed. The Agricultural Income Tax Officer has concluded that the genuine character of the trust was religious and that to Muslim community only and hence within the mischief of Section 4(3)(b) and 4(3)(c) of the Act and the agricultural income applied on its objects is not entitled for exclusion/exemption under Section 4(1)(b) and 4(1)(c) of the Act. In his well considered assessment order, the Agricultural Income Tax Officer has brought on record that the assessee trust is a religious trust and that the trust was to be run only for the benefit of Muslim community and this finding is based on the objects and aims of the trust deed and also with reference to the books of accounts maintained by the assessee wherein the Agricultural Income is expended solely for the purpose of establishing Islamic institutions for imparting Islamic religions teachings and therefore, has concluded that the trust was for the benefit of particular religious community or caste and therefore not entitled for exemption. However, the first appellate authority has struck a different note and this is corrected by the Tribunal. The Trust Deed, as we have already stated, would clearly indicate that the income of the Trust is to be used and applied specifically to promote Islamic institutions imparting Islamic religious

teachings and to promote and facilitate running of other Islamic institutions. That only means the trust is created for the specific purpose of welfare of the Muslim community. In our view, since the dominant object of the Trust is for the benefits of a particular religion and not for a public purpose, the assessee trust is not entitled to the exemption under Section 4(1)(b) and (c) of the Act.

22. Reference to the case law on the point may not be necessary for the purpose of deciding these Tax Revision Cases for the simple reason,that the objects of the Trust and the books of accounts maintained by the Trust would clearly demonstrate that the entire agricultural income derived by the Trust is wholly expended for the purpose of promoting Islamic institutions imparting Islamic religious teachings.

23. In that view of the matter, we are of the opinion that the questions of law raised by the assessee requires to be answered against the assessee and in favour of the Revenue. Accordingly, we pass the following:

O R D E R

a) All the Tax Revision Cases are rejected.

b) The questions of law raised are answered against the assessee and in favour of the Revenue. But, in the facts and circumstances of the case, parties are directed to bear their costs.

Consequently, all pending interlocutory applications are also

rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.